REMARKS:

This application has been carefully studied and amended in view of the Office Action dated September 12, 2006. Reconsideration of that action is requested in view of the following.

The claims have been carefully studied and amended in view of the Office Action and in particular with regard to the rejections under 35 USC 112. In order to advance the prosecution o this case parent claim 7 has been substantially amended to define the invention with regard to the use of a xenon adjuvant. Claim 7 also recites its use in a manner consistent with the matters raised in the Office Action. As a result of these amendments claim 7 should comply with 35 USC 112. The remaining previously presented claims have been canceled. Claims 15-19 have been added to complete the claim coverage.

With regard to the various amendments made to claim 7 the following notes some amendments made to conform with the wording of the independent claims in co-pending application Serial Nos. 10/517,722 and 10/517,723. The following comments regarding the individual features added to claim 7 also refer to support for those features in the present specification with regard to numbered paragraphs in the corresponding published application 2005/0255169:

Claim 7 defines a combination of xenon and the at least one medicament as "a combination medicament" (see lines 1-3 in paragraph [0013].

Claim 7 states that xenon is "gaseous xenon" selected from the group consisting of gaseous xenon or a xenon containing gas mixture (see also line 1 in paragraph [0034]).

The concentration of xenon in the xenon containing gas has been limited to "not more than 65 Vol-%" (see paragraph [0032)].

Claim 7 has also been amended by reciting that xenon is used "with the intended purpose of assisting the cerebral hemogenous medicament". Although the expression "with the intended purpose" of assisting the effect of the cerebral hemogenous medicament is not literally disclosed in the application, the application clearly states that xenon is used with the clear intention to act as an adjuvant (see, for Example, paragraph [0010] .

Claim 7 defines the at least one medicament to an "a cerebral hemogenous medicament for the treatment of acute and chronic cerebral disorders or impairments, ischemic brain disorders, stroke, reperfusion damage or brain trauma" (see the last line in paragraph [0010] in combination with claim 9).

Claim 7 states that the adjuvant (xenon) is administered "by inhalation" (see claim 4 in published application).

Claim 7 defines the application of the cerebral homogeneous medicament to be an "oral or parenteral" application (see the last line in paragraph [0013]).

In view of these amendments, claims 2-4 and 9-11 have been canceled.

Claims 15-19 have been added to define the upper limit of the amount of xenon in the gas mixture administered to a patient step by step from 60 down to 20% by volume (see paragraph [0032]).

With regard to the rejections under 35 USC 112 the following is noted:

a) The pending claims do not cover the prophylaxis of stroke. According to claim 7, the method is only directed to the treatment of a condition selected from the

group consisting of acute and chronic cerebral disorders or impairments, ischemic brain disorders, stroke, reperutision damage and brain trauma.

b) On page 6 of the Office Action, the Examiner presents a further reason for reject-lngtheclaimsunder35USC § 112. The Examiner states that the application does not disclose any information about the dosages, duration or expected endpoints of the treatment. The application also does not disclose any information for the person skilled in the art to determine when xenon is acting as an adjuvant.

In response, applicants request that the following should be considered:

First of all, although the application does not disclose any information regarding the duration or the expected endpoints of the treatment, clear information is given, for example, about the concentration of xenon that is used as a part of the combination medicament (see paragraph [0032]).

In view of the dosages of the cerebral hemogenous medicament it should be noted that the medicaments listed in the application on file are all medicaments which have previously been used to treat patients. Accordingly, the person skilled in the art is aware of the appropriate dosage and appropriate treatment durations for the individual medicaments. It should also be noted that the dosage and the treatment duration for a given cerebral hemogenous medicament are dependent from different factors like the body weight of the patient or the state of the disease, Accordingly, exact duration times and dosages cannot be given in any event and would be within the knowledge of one skilled in the art.

In view of the question as to how to determine the effectives of xenon as an adjuvant, it is noted that the application clearly describes the positive effect xenon has on cerebral

hemogenous medicaments. Paragraph [0007] teaches that xenon assists the effect of cerebral hemogenous medicaments by improving the medicament supply to the brain. Accordingly, the person skilled in the art can easily judge whether xenon, for a given cerebral medicament, acts as an adjuvant or not. Such person just has to compare the concentration of the medicament in the brain at a given dosage with and without the co-administration of xenon. If the concentration of the medicament in the brain is increased by the co-administration of xenon, then xenon acts as an adjuvant.

c) The objection raised on page 8 of the Office Action regarding the expression "what is administered" is moot by the claim amendments.

It is respectfully submitted that parent claim 7 and its dependent claims are patentable over Fishman. Fishman only teaches to use xenon with the intended purpose of acting as an anesthetic, Fishman does not disclose to use xenon with the intended purpose of acting as an adjuvant assisting the effect of a further medicament.

In order to further clearly distinguish parent claim 7 from Fishman oxygen is excluded as a possible cerebral hemogenous medicament. Fishman, however, only teaches the combination of 70 Vol.-% xenon with methylatrophine bromide, thiopentone and fenantyl as further medicaments (see column 5, lines 16-19 in Fishman). Methylatrophine bromide, thiopentone and fenantyl, however, are neither cerebral hemogenous medicaments used to treat acute and chronic cerebral disorders or impairments, ischemic brain disorders, stroke, reperfusion damage and brain trauma, nor are they used in combination of not more than 65 Vol.-% of xenon.

Reconsideration is respectfully requested of the rejection of claim 7 [and canceled claim 9] on the ground of obviousness-type double patenting with regard to

the two co-pending applications. Because of the amendments now made to claim 7, it is submitted that claim 7 defines a method which is patentably distinct from the claimed method of the two co-pending applications. Accordingly, the double patenting rejection should be withdrawn.

In view of the above remarks and amendments this application should be passed to issue.

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